

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS BISIGNANO,
DARIN JEFFERS, MICHAEL O'TOOLE,
MICHAEL BOURGAL, et al.,

Plaintiffs,

-against-

DOUBLE A CONTRACTING, INC.,

Defendant.

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ERIC KOMITEE, United States District Judge:

The plaintiffs here – trustees of a union's pension fund and other investment vehicles – sued the defendant for violating the ERISA statute, 29 U.S.C. §§ 1145 and 1132(a), and Labor Management Relations Act, 29 U.S.C. § 185. Plaintiffs allege that the defendant has failed to pay certain amounts due to the funds they manage and failed to submit certain required remittance reports. The plaintiffs moved for default judgment on March 7, 2021, because the defendant failed to appear or otherwise contest the allegations. ECF No. 10. I referred that motion to Magistrate Judge Arlene Lindsay for Report and Recommendation ("R&R"). Judge Lindsay recommended that I grant the motion for a default judgment but deny the accompanying motion for damages (with leave to renew the latter). ECF No. 15 (R&R dated January 10, 2022). Adopting Judge Lindsay's

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recommendation, I granted the plaintiffs a default judgment on March 30, 2022. ECF No. 21. I also referred the plaintiffs' renewed motion for damages to Judge Lindsay.

I have now received Magistrate Judge Lindsay's second R&R (dated July 12, 2022). ECF No. 22. Judge Lindsay recommends that I grant the plaintiffs' renewed motion for damages in part, in the following amounts:

- (1) \$1,152.26 for the unpaid contributions identified in Audit No. 20-0119, plus pre-judgment interest on those contributions in the amount of \$488.12 (for the period running from the due date of October 4, 2019, through February 9, 2022 – the date on which Plaintiffs' interest calculation terminated), plus additional pre-judgment interest in the amount of fifty-seven cents per day from February 10, 2022 through the entry of a final judgment;
- (2) \$88,889.16 for estimated unpaid contributions from July and August of 2020, plus pre-judgment interest on those contributions in the amount of \$21,808.29 (for the period running from the dates on which those contributions became due through February 9, 2022), plus \$21,808.29 in liquidated damages, plus pre-judgment interest in the amount of \$21.92 per day from February 10, 2022 through entry of final judgment; and

(3) \$252,245.66 in unpaid contributions for November 2018 through June 2020, \$67,670.95 in pre-judgment interest on unpaid contributions (for the period running from the due date of August 14, 2020 through February 9, 2022), \$67,670.95 in liquidated damages, and pre-judgment interest in the amount of \$121.40 per day from February 10, 2022 through the entry of final judgment.

R&R 2. Judge Lindsay also recommends that I deny the plaintiffs' request for damages on their claim that the defendant breached a 2019 settlement agreement. *Id.* at 9.

Neither party has filed objections and the time to do so has expired. Accordingly, the Court reviews the recommendation for clear error on the face of the record. *See* Advisory Comm. Notes to Fed. R. Civ. P. 72(b); *accord State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013).

Having reviewed the record, I find no clear error and therefore adopt the R&R in its entirety. Thus, I grant the plaintiffs' motion for damages in part, as set out above. In addition to the damages award outlined above, the Clerk of Court is respectfully directed to enter the default judgment set forth in my March 30, 2022 Order, which went on to direct the defendant to pay \$3,586.53 in interest on contributions that the defendant made belatedly between December 2018 and April 2019,

plus attorney's fees and costs in the amount of \$12,963.51. See ECF No. 21, at 2. The Clerk of Court is also respectfully directed to close this case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: October 20, 2022
Brooklyn, New York